

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

J.H., a minor, by and through his parent and
next friend, L.D.,

Plaintiff,

vs.

Civil Action No. 19-C-161

WEST VIRGINIA STATE POLICE,
FORMER TROOPER MICHAEL KENNEDY, and
FORMER TROOPER DEREK WALKER,
Former members of the West Virginia State Police,
BERKELEY COUNTY, WV SHERIFFS
DEPUTIES CHRISTOPHER MERSON and
AUSTIN ENNIS, and others whose names are unknown
at this time but who were present and participated in the events
about which this action is brought and are defendants
to the claims alleged.

Defendants.

FIRST AMENDED COMPLAINT

1. Plaintiff is a citizen of the State of West Virginia and is a resident of Berkeley County, West Virginia.
2. Defendant West Virginia State Police is an agency of the State of West Virginia, and exists and is governed under the provisions of West Virginia Code § 15-2-1, *et seq.*
3. Defendants Michael Kennedy and Derek Walker were members of the West Virginia State Police, as they are defined in West Virginia Code §§ 15-2-12 and 13, and were acting both within and outside the scope of their duties when the events described below occurred and the claims listed below arose.
4. Berkeley County, WV Sheriffs Deputies Christopher Merson and Austin Ennis were employed as deputy sheriffs of Berkeley County, WV, and were acting within and outside the scope of their duties at the time this cause of action arose.
5. On or about November 19, 2018 and at other times relevant to this complaint, Defendants Kennedy and Walker were employed and engaged by the West Virginia State Police as Troopers and assigned to duties in the Eastern Panhandle area of West Virginia, and were on active duty at the time and place the claims listed below arose.

6. On or about November 19, 2018, and at other times relevant to this complaint, Defendants Merson and Ennis were employed and engaged as deputy sheriffs in Berkeley County, WV and were on active duty at the time this cause of action arose.

7. On or about November 19, 2018 in Berkeley County, West Virginia, Defendants Kennedy, Walker, Merson and Ennis, individually and acting together as a mob under color of law, brutally and severely beat and hit the Plaintiff, J.H., a minor, in about the head and body, causing him injuries along with bodily damage, pain and suffering.

8. The actions of the Defendants Kennedy and Walker are imputed to their employer, the West Virginia State Police, under the doctrine of *respondeat superior*.

9. The West Virginia State Police is vicariously liable for the torts of Defendants Kennedy and Walker.

10. The West Virginia State Police as an organization was negligent and/or reckless in the following manner:

(a) It failed to properly train its officers and members, including Defendants Kennedy and Walker, in such a way as to perform their missions without violating the law by their exercising correctional and punishment powers over any person by violence;

(b) It failed to seek out, negate, and prevent the execution of any policy and agreement, written or unwritten, wherein its members physically assault and beat up any person accused of a criminal offense who flees or attempts to flee from a member or members, and it failed to discipline its members who have engaged in such conduct in the past;

(c) It failed to exercise field supervision over its members so as to preclude the intentional physical assaulting and beating up of criminal suspects;

(d) It was negligent and/or reckless in other manners of its operation and control, as will be revealed through discovery in this action.

(e) Such negligent acts and omissions were the proximate cause of injuries to Plaintiff, J.H., a minor.

11. The negligent and/or reckless acts and omissions of Michael Kennedy, Derek Walker, Christopher Merson and Austin Ennis were the proximate cause of the injuries to Plaintiff, J.H., a minor, and were done with malicious purpose, in bad faith, and were reckless.

12. Defendants, the West Virginia State Police, and Michael Kennedy and Derek Walker, together, individually, and severally as the West Virginia State Police, have committed numerous violations of the statutes of West Virginia including:

- (a) Violation of WV Code §15-2-12(b)(1), Failure to make an arrest when a witness to the perpetration of a crime;
- (b) Violation of West Virginia Code § 15-2-14, failure to perform their duties honestly and faithfully, and to support the Constitutions.
- (c) Violation of WV Code §15-2-13(a), interference with the rights of a person;
- (d) Violation of West Virginia Code § 61-2-9, Malicious assault, unlawful assault and assault and battery;
- (e) Violation of WV Code §61-5-16, refusal to execute an act of the legislature;
- (f) Violation of WV Code §61-5-28, failure to perform official duty;
- (g) Violation of West Virginia Code § 61-6-7, conspiracy to inflict injury;
- (h) Violation of West Virginia Code § 61-6-12, organization of a mob to exercise correctional powers over any person by violence;
- (i) Violation of West Virginia Code § 61-6-21, violation of the civil rights of J.H., a minor;
- (j) Violation of West Virginia Code § 61-10-31, conspiracy to commit a crime.

13. Defendants, Deputy Christopher Merson and Deputy Austin Ennis, together, individually, and severally have committed numerous violations of the statutes of West Virginia including:

- (a) Violation of West Virginia Code § 61-2-9, Malicious assault, unlawful assault and assault and battery;
- (b) Violation of WV Code §61-5-16, refusal to execute an act of the legislature;
- (c) Violation of WV Code §61-5-28, failure to perform official duty;
- (d) Violation of West Virginia Code § 61-6-7, conspiracy to inflict injury;
- (e) Violation of West Virginia Code § 61-6-12, organization of a mob to exercise correctional powers over any person by violence;
- (f) Violation of West Virginia Code § 61-6-21, violation of the civil rights of J.H., a minor;
- (g) Violation of West Virginia Code § 61-10-31, conspiracy to commit a crime.
- (h) Violation of West Virginia Code §62-10-6, failure to make an arrest when crimes were committed in their presence.

14. The violation of the above statutes by the Defendants was the proximate cause of the injuries to Plaintiff, J.H., a minor.

15. Plaintiff has a right of action against the Defendants for their violation of the aforesaid statutes under the provisions of West Virginia Code § 55-7-9.

16. The acts and omissions of the Defendants negligently and intentionally inflicted emotional distress on Plaintiff.

17. Defendant West Virginia State Police is insured under an insurance policy of the State Board of Risk and Insurance Management, and upon information, the Plaintiff believes has a maximum liability limit of at least one million dollars (\$1,000,000). The recovery sought herein is limited to the applicable insurance coverage and its exceptions.

18. Upon information and belief, Defendants Merson and Ennis are insured under an insurance policy pursuant to West Virginia Code §7-14A-3. The recovery sought herein is limited to the actual insurance coverage and its exceptions.

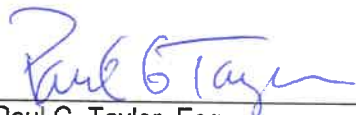
WHEREFORE, Plaintiff, J.H., a minor, demands judgement against the Defendants in an amount to the limits of the aforesaid insurance policies for:

- a. compensatory damages for injuries sustained to his person;
- b. punitive damages to punish the Defendants for their outrageous conduct;
- c. interest, costs, and attorney's fees.

DEMAND FOR TRIAL BY JURY

Under the provisions of Rule 38(b), Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues of fact in this action.

J.H., a minor,
By Counsel



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